

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

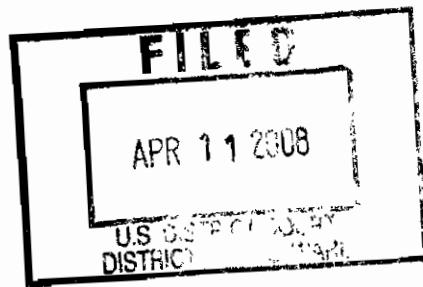
THOMAS R. MILLER
appellant,

: Cr.A. NOS S92-12-0044 Thru S92-12-
: 0047
: 1:08-cv-137 (GMS)

v.

STATE OF DELAWARE
appellee.

APPENDIX TO OPENING BRIEF OF
GROUND ONE



(B) scanned

Thomas R. Miller
THOMAS R. MILLER
DCC
1181 PADDOCK RD.
SMYRNA, DE 19977

DATED: April 9, 2008

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One statute page 3 to 8 (A-2)

One Superior Court criminal document page 14, (A-3)

TWO Letters one from Judge Graves, one from Rosemary B. Beavregard
Exhibit (A-3)

One 2 page information Exhibit A-4

PUBLIC DEFENDER OF THE STATE OF DELAWARE
SUSSEX COUNTY OFFICE
12 EAST PINE STREET
GEORGETOWN, DELAWARE 19947

10

CERTIFIED

AS A TRUE COPY

ATTESTED

Marge Boddy
PROTHONOTARY

Per

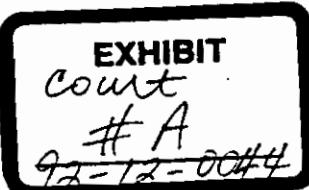
C. L. Johnson
CLERK

DATE

2/3/92

THIS WILL CONFIRM THAT I WAIVE MY PRELIMINARY HEARING IN THE
COURT OF COMMON PLEAS FOR A COPY OF THE POLICE REPORT AND FURTHER
I AGREE THAT THE STATE CAN PROCEED IN THE SUPERIOR COURT BY THE
FILING OF INFORMATIONS IN LIEU OF PRESENTING IT TO THE GRAND JURY
FOR INDICTMENT.

Richard Thomas Miller
DEFENDANT



A-3

E-A-2

was sentenced to a period of incarceration of twenty years. Subsequently, the defendant filed a motion for postconviction relief which was granted, and the defendant was allowed to withdraw his guilty plea and proceed to trial on all charges. Following a jury trial, the defendant was convicted on May 23, 1994 of unlawful sexual intercourse in the first degree and burglary in the second degree. The defendant was sentenced to a period of life imprisonment as to the sex offense and a period of eight years as to the burglary. Following the defendant's unsuccessful appeal, he filed the present motion with the Court.

Ground One.
"Not Signing or Waived Indictment"

There are no procedural bars. The defendant's claim alleges a lack of jurisdiction due to the failure of his case to be prosecuted by way of indictment.

The defendant was prosecuted by an information the Department of Justice filed on December 28, 1992. On January 8, 1993, a written arraignment, pleading not guilty, was filed pursuant to Rule 10(c). Mr. Miller and his attorney executed this by written pleading. A review of the Court's docket reveals that an executed waiver of indictment was not filed with the information. The Court should have picked up this error because Superior Court Criminal Rule 7(b) requires that a felony crime be prosecuted by indictment unless the defendant has waived indictment in open Court or in writing. The issue: did Superior Court have jurisdiction to try and subsequently sentence the defendant? For the reasons stated below, I find that, by the

defendant's conduct, there was a de facto waiver of his right to be indicted and that the defect in the record should not result in this defendant having another trial.

Applicable Rule

A criminal "offense within the exclusive jurisdiction of Superior Court other than a capital crime" must be prosecuted by indictment unless the indictment is waived and proceeds by information. Super. Ct. Crim. R. 7(a). The defendant may waive indictment and proceed by information after he or she has been advised of the nature of the charge and of his or her rights. Super. Ct. Crim. R. 7(b). Under the Delaware Superior Court Criminal Rules, the defendant may waive prosecution by indictment in writing or in open Court. Super. Ct. Crim. R. 7(b).

Pursuant to rule 61(g)(1), the record has been expanded. Pursuant to that Rule, the Court directed the Department of Justice, the Public Defender's Office and the contract attorney to review their files to determine if the defendant had executed any document evidencing his waiver of indictment in order to proceed by way of information. Additionally, the Court made inquiry as to what occurred at the defendant's preliminary hearing in the Court of Common Pleas.

On June 16, 1995, the contract attorney forwarded to the Court the original of a document the defendant executed while under the representation of the Public Defender's Office. It is dated December 3, 1992, which was the date of the defendant's preliminary hearing. The document states the following: "This

will confirm that I waive my preliminary hearing in the Court of Common Pleas for a copy of the police report and further, I agree that the State can proceed in Superior Court by the filing of informations in lieu of presenting it to the Grand Jury for indictment." At the signature line for the defendant, there is the name of Richard Thomas Miller. On June 29, 1995, the Court forwarded a copy of this document to the defendant.

I note that the Court of Common Pleas records, and a transcript of the proceedings below evidences, that the defendant, through his attorney, waived his preliminary hearing. This is consistent with the aforementioned document and is consistent with the custom and practice of obtaining copies of police reports by waiving preliminary hearing and proceeding by way of information in lieu of indictment. Police reports are not normally discoverable under Rule 16.

On September 19, 1995, the Court held an evidentiary hearing to determine: (1) if the defendant executed the aforementioned waiver; (2) was the preliminary hearing and indictment, in fact, waived for the police reports; and (3) did the defense receive the reports pursuant to the waiver. At the September 19, 1995 hearing, the December 3, 1992 waiver document was introduced. The public defender investigator specifically recalled meeting with Mr. Miller and reviewing with him the aforementioned waiver document. Additionally, two identical waiver documents involving prior offenses were introduced from the public defender's file. The defendant acknowledged having read the earlier waiver

documents and having signed them. One of these prior offenses ultimately was prosecuted by information in the Superior Court and the defendant pled guilty to a burglary. The public defender's staff and attorneys testified they always review the consequences of the waiver of preliminary hearing and grand jury indictment with each defendant before advising the Court of Common Pleas of a waiver. Even though the defendant questions whether or not he executed the waiver document dated December 3, 1992, I am satisfied he did based upon the investigator's testimony, the defendant's acknowledgement that it looks like his signature, and my comparison of the other documents containing the defendant's signature to the waiver document in question.

Subsequent to the filing of the charging document, the information, the defendant (i) filed a written arraignment entering a plea of not guilty and requesting a jury trial; (ii) entered a plea of guilty and withdrew same for reasons other than jurisdiction; (iii) went to trial and was convicted; and (iv) appealed his conviction.

It is apparent that Mr. Miller, his public defender, his contract attorney, the Department of Justice and the Court operated under the assumption that a waiver of indictment had been filed.

I am satisfied that the records of the Court of Common Pleas, the executed December 3, 1992 waiver document, and the testimony of his then assigned attorneys establish that the defendant waived his right to a preliminary hearing and Grand

Jury indictment in order to obtain a copy of the police report which would not have been obtainable to him through Rule 16 discovery. Because of that waiver, he obtained the police reports. Following same, the case was processed by his attorneys, the Department of Justice, the Court of Common Pleas and the Prothonotary with the understanding that the case would be tried by way of information. A written waiver document has now been produced and filed with the Court.

Based upon the defendant's earlier experience with the criminal justice system and his execution of documents waiving his right to grand jury indictment twice prior to the present case, I find that he knowingly, voluntarily and intelligently waived his right to grand jury indictment by the agreement he reached with the State to obtain copies of the police report. This occurred on December 3, 1992.

The Superior Court's file now contains that document. While it is admittedly a tardy filing, it firmly establishes that this defendant knew of and agreed to prosecution by information.

I further find that the defendant acquiesced to the jurisdiction of this Court by participating in all phases of the prosecution from his Rule 10 arraignment through the filing of his appeal.

Under these facts and circumstances, I find that the defendant waived his right to be prosecuted by indictment and submitted himself to the jurisdiction of this Court. I find that the failure to obtain the express waiver was a technical

violation which did not deprive the Court of jurisdiction. Ornelas v. United States, 11th Cir., 840 F.2d 890 (1988). Under these facts, the failure to formalize same should not be a ground for a new trial.

Ground Two.
"Bail being raised for same offense"

The defendant argues that his bond was raised following his initial postconviction proceedings.

This allegation is barred pursuant Rule 61(i)(3) in that the defendant has not provided any excuse as to why this matter was not asserted in the proceedings leading to his conviction, including the appeal, nor has he shown any prejudice arising from the alleged violation.

As to the merits, the defendant's bond had nothing to do with his conviction. Collateral matters not contributing to the conviction cannot provide relief from the conviction under Rule 61.

Ground Three.
"I signed and requested a non-jury trial."

The defendant alleges his rights were violated because he did not want a jury trial. He also argues bias and prejudice on the part of the jury.

Initially, the defendant was scheduled for a jury trial. Then the aforementioned events concerning the Robinson plea and the withdrawal of same occurred.

Later, when his case was scheduled for trial, the defendant indicated his desire to waive a jury trial. At first, the State

SUPERIOR COURT CRIMINAL DOCKET
(as of 10/13/2004)

Page 14

State of Delaware v. THOMAS R MILLER

DOB: 03/25/1958

State's Atty: JAMES W ADKINS , Esq.

AKA:

Defense Atty: ROSEMARY B BEAUREGARD , Esq.

No.	Event Date	Event	Judge
104	FILED BY DEF. (SA) 11/07/1994	LETTER TO JUDGE GRAVES FROM ROSEMARY BEAUREGARD RE: RICHARD THOMAS MILLER BRIEF. (LM)	
105	12/16/1994	LETTER TO COURT, FROM DEF. (MB)	
106	05/24/1995	MOTION FOR POST-CONVICTION RELIEF POST CONVICTION RELIEF MOTION # 1 FILED BY DEF. (SA)	
107	05/24/1995	LETTER FROM DEFENDANT TO JUDGE REQUESTING THAT ROSEMARY BEAUREGARD BE ALLOWED TO REPRESENT DEF ON PCR MOTION (SA)	
108	06/01/1995	LETTER FROM SUPREME COURT ENCLOSING RECORD AND MANDATE ON CASE (SA)	
109	06/01/1995	MANDATE AFFIRMED ORDER SIGNED 5/9/95 BY JUSTICE HARTNETT. (SA)	
110	06/16/1995	WAIVER OF INDICTMENT SIGNED BY DEFT. /WAIVER OF PRELIMINARY HEARING SIGNED BY DEFENDANT ON 12/3/92. (LM)	
111	06/16/1995	LETTER TO JUDGE GRAVES FROM ROSEMARY BEAUREGARD RE: ENCLOSING ORIGINAL WAIVER OF PRELIMINARY HEARING (LM)	
112	06/19/1995	LETTER TO DEF. FROM COURT RE: ADVISING DEF. THE UNFILED WAIVER WAS IN HIS ATTY.'S FILE AND ENCLOSING A	GRAVES T. HENLEY

A-3
SUPERIOR COURT
OF THE
STATE OF DELAWARE

T. HENLEY GRAVES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

92-12-0044

June 19, 1995

Mr. Richard Thomas Miller
Delaware Correctional Center
P. O. Box 500
Smyrna, DE 19977

Dear Mr. Miller:

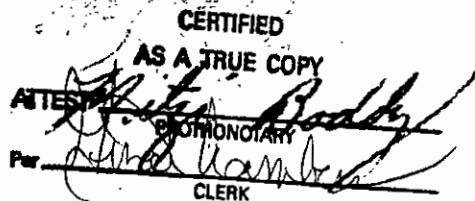
I had my staff contact the Attorney General's Office, the Public Defender's Office and the contract attorney to determine if the unfiled waiver was in one of their files.

Per the attached, it was located.

Yours very truly,


T. Henley Graves

THG:kjt
Enclosure
xc: Prothonotary



A-3

A. DEAN BETTS
ROSEMARY B. BEAUREGARD

Betts & Beauregard, P.A.

JUN 16

ATTORNEYS AT LAW
15 SOUTH RACE STREET
P.O. BOX 770
GEORGETOWN, DELAWARE 19947
TELE: (302) 856-7755
FAX: (302) 856-4975



June 16, 1995

The Honorable T. Henley Graves
Superior Court of Delaware
Sussex County Courthouse
Georgetown, DE 19947

CERTIFIED
AS A TRUE COPY
[Handwritten signature]
ATTESTED BY *[Handwritten signature]*
PROTHONOTARY
Per *[Handwritten signature]*
CLERK

RE: *State v. Richard Thomas Miller*

Dear Judge Graves:

Per your inquiry, enclosed please find the original Waiver of Preliminary Hearing signed by the above captioned individual.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

BETTS & BEAUREGARD, P.A.

Rosemary B. Beauregard
Rosemary B. Beauregard

RBB/tec

A-3

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

W.B.
A-5

THE STATE OF DELAWARE NOS. S92-12-0044 thru 0047

vs.

THOMAS RICHARD MILLER
I.D. #92S05488

I N F O R M A T I O N

The Attorney General of the State of Delaware by information makes that THOMAS RICHARD MILLER did commit the following offenses, to-wit:

COUNT 1 - UNLAWFUL SEXUAL INTERCOURSE IN THE FIRST DEGREE -
FELONY - S92-12-0044

THOMAS RICHARD MILLER on or about the 29th day of November, 1992, in the County of Sussex, State of Delaware, did intentionally engage in sexual intercourse with another person, Martha B. Pederson, without her consent and the defendant was not the victim's voluntary social companion on the occasion of the crime and had not premitted him sexual intercourse within the previous 12 montsh, in violation of Title 11, Section 775(a)(2) of the Delaware Code.

COUNT 2 - BURGLARY IN THE FIRST DEGREE - FELONY - S92-12-0045

THOMAS RICHARD MILLER on or about the 29th day of November, 1992, in the County of Sussex, State of Delaware, did knowingly enter unlawfully in a dwelling, at night, belonging to Martha M. Pederson, with the intent to commit a crime, Unlawful Sexual Intercourse in the First Degree, therein, and while in the dwelling, he caused physical injury to Martha M. Pederson who was not a participant in the crime, in violation of Title 11, Section 826(2) of the Delaware Code.

10-~~8~~ A-5

COUNT 3 - UNLAWFUL SEXUAL PENETRATION IN THE SECOND DEGREE -
FELONY - S92-12-0046

THOMAS RICHARD MILLER on or about the 29th day of November, 1992, in the County of Sussex, State of Delaware, did intentionally place one or more fingers inside the vagina of Martha M. Pederson, without her consent and during the commission of the crime, he caused physical injury to said Martha M. Pederson, in violation of Title 11, Section 771 of the Delaware Code.

KARL HALLER, ESQUIRE
Assistant Public Defender
Pine Street
Georgetown, Delaware

s/CHARLES M. OBERLY, III
ATTORNEY GENERAL

James W. Collins
DEPUTY ATTORNEY GENERAL

DATED:

A-4

, IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

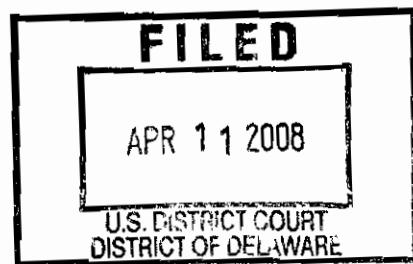
THOMAS R. MILLER
APPELLANT

Cr. A. Nos. S92-12-0044 thru -
S92-12-0047
1:08-cv-137(GMS)

v.

STATE OF DELAWARE
APPELLEE

APPENDIX TO OPENING BRIEF, OF
GROUND TWO.



DATED: April 9, 2008

Thomas R. Miller
THOMAS R. MILLER
DCC 1181
PADDOCK RD.
SMYRNA, DEL 19977

	1
Exhibit (B-1) one page supplement report	1
Exhibit (B-2) search warrant application and affidavit	1
Exhibit (B-3) one continuation sheet	1
Exhibit (B-4) Front page of Police report Box 32	1
Exhibit (B-5) 3 page Hospital report	1
Exhibit (B-6) One FBI Forensic analysis report	1
Transcript page B-115	2
Transcript page P	2
351 A.2d 84 State v. Doe (Del. Super 1976)	2
Exhibit (B-7) one letter from Counsel Beavregard	3
Transcript page B-155 thru B-157	3
Transcript page A-128, A-129	3
Exhibit (B-8) one certified report	3
Transcript A-79, A-80	3
Mooney v. Holohan 294 U.S. 103, 112, 55 S.C. 340, 341, 79 L.Ed 79 (1935)	4
Transcript page B-27, 28, 32 and 33	4
Exhibit B-9 one statement sheet	4
Transcript page B-113 thru B-117	5
Transcript page B-115	5
Deberry v. State Del. Supr, 45 A.2d 744 (1983)	5
Hammond v. State Del. Supr, 569 A.2d 81 (1989)	5
Arizona v. Youngblood 488 U.S. 51, 109 S.Ct 333, 102 L.Ed 2d 281 (1988)	5
Bailey v. State Del. Supr, 521 A.2d 1069, 1090 (1987)	6
Transcript page B-113	6
Brady v. Maryland 83 S.Ct 1194	6
Exhibit (B-10) one certified juror sheet, one jury selection sheet	7
Ibid n. 104, Johnson, Hartford current, March 20, 1990.	8
Transcript page B-190 thru B-203	8
Transcript page B-197	8
State v. Markus cite as 683 A.2d 221 N.J. Super. A.D. (1996)	9
Batson v. Kentucky cite as 106 S.Ct 1712 (1986)	10
Hughes v. State Del. Supr, 490 A.2d 1034 (1985)	11
In State v. Thomas 586 A.2d 250 (1991)	11

Hughes v. State	437 A.2d 559	13
Sexton v. State, Del. Supr.	397 A.2d 540 (1979)	13
Edwards v. State Del. Supr	320 A.2d 701 (1974)	13
Bennett v. State, 3 Storey 36	Del. Supr, 164 A.2d 442, 446 (1960) (397 A.2d at 544)	13
Hooks v. State, Del. Supr,	416 A.2d 189, 204 (1980)	13
State v. Mayberry NJ. Supr,		14
Justice Sutherland in Berger v. United States	295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed 1314 (1935)	14-15
Bennett v. State, Del. Supr, 3 Storey 36,	164 A.2d 442, 446 (1960)	15
Jenkins v. State Del. Supr	413 A.2d 874 (1980)	15
		16

B-1

SUPPLEMENT REPORT

6 COMPLAINT NO.
769218

5 PAGE 1 OF 1	3 DATE-TIME THIS REPORT 11/30/92 2105	1. V <input checked="" type="checkbox"/> D <input type="checkbox"/> 7 NAME (LAST - FIRST - MIDDLE) S <input type="checkbox"/> RP <input type="checkbox"/> Pederson, Martha M (BUSINESS/FIRM NAME)
2. DATE - TIME OF ORIGINAL INCIDENT Sun 11/30/92		12 ADDRESS [REDACTED]
29 4-F-14 SENT YES <input type="checkbox"/> NO <input checked="" type="checkbox"/>	DATE SUP SENT YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	43 ADDITIONAL STOLEN N/A
58 FOLLOW-UP ADD INFO <input type="checkbox"/>	44 RECOV STOLEN DATE N/A	39 OFFENSE CHANGED FROM N/A
46 ADDITIONAL RECOVERED N/A		25 CORRECT OFFENSE Unlaw Sex Pen. T-11-772
		26 UCR CLASS 1172-10

NARRATIVE: DO NOT REPEAT THE RESULTS OF THE PRELIMINARY INVESTIGATION. REPORT ALL ACTIONS TAKEN AND ALL DEVELOPMENTS IN THE CASE SINCE THE LAST REPORT. DESCRIBE AND RECORD THE VALUE OF RECOVERED PROPERTY. LIST THE NAME, RECORD NUMBER AND DESCRIPTION OF PERSONS ARRESTED. EXPLAIN CLASSIFICATION CHANGE. CLEARLY SHOW THE DISPOSITION OF RECOVERED PROPERTY.

25 Unlawful sexual intercourse T-11 775(a)(2)

25 Burglary T-11-826

25 Criminal Trespass

At 1816 hrs writer excuted a search warrant signed by Judge Boddy @ J.P Court #3. Writer pick-up def (Miller) @ SCI and transported same to Beebe Medical Center in ref to having samples of Hair, Salivia, and blood taken from the def (Miller) and sent to the F.B.I lab @ a later date and time for analysis. Dr. Angel MD, and Amy Register R.N. of Beebe performed the combings and gathering of evidence.

KAREN HALLER, Esquire
Assistant Public Defender
Pine Street
Georgetown, Delaware

52 REPORTING OFFICER Ptlm B. Ritter 9478 76U	NO. DIV.	53 STATUS UNFOUNDED <input type="checkbox"/> PENDING - ACTIVE <input type="checkbox"/> ARREST - ADULT <input checked="" type="checkbox"/>	54 EXCEPTIONAL CLEAR DEATH SUSPECT <input type="checkbox"/> PROSECUTION DECLINED <input type="checkbox"/> EXTRADITION DECLINED <input type="checkbox"/>	NO V COOPERATION <input type="checkbox"/> JUV NO CUSTODY <input type="checkbox"/> ADMIN SANCTION <input type="checkbox"/>
51 SUPERVISOR APPROVING		EVIDENCE <input type="checkbox"/> TRAC STOLEN <input type="checkbox"/> SUSP LOCATED <input type="checkbox"/>	SUSP VEH ID'D <input type="checkbox"/> SUSP DESCRIBED <input type="checkbox"/> SUSP ID'D <input type="checkbox"/>	
56 SOLVABILITY FACTORS SUSP. NAMED <input type="checkbox"/>	WIT <input type="checkbox"/> MO. <input type="checkbox"/>			

57
OFFICE FOLLOW-UP CLOSE

Miller, Thomas K. B.M. 411000
5-8 Wt 148 Blk Hair BRO Eyes
Who committed unlawful
sexual intercourse.

**SEARCH WARRANT
APPLICATION AND AFFIDAVIT**

STATE OF DELAWARE

DATE OF APPLICATION

COUNTY OF Sussex11.30.92

COMPLAINT NO.

76921831

NAME(S) OF AFFIANT(S):

Ptlm Bruce MillerOF LewesPolice

OF

personally appeared before me, and being duly sworn (affirmed) according to law, depose(s) and say(s) that there is probable cause to believe that certain property is evidence of or the fruit of a crime or is contraband or is unlawfully possessed or is otherwise subject to seizure, and is located at particular premises or places or in the possession of particular person(s) as described below.

IDENTIFY ITEM(S) TO BE SEARCHED FOR AND SEIZED:

2-Containers of Blood, 1- scamen sample, 1- saliva sample, Samples of head hair, samples of pubic hair and finger nail samples

SPECIFIC DESCRIPTION OF PREMISES AND/OR PLACE(S) AND/OR VEHICLE(S) AND/OR PERSON(S) TO BE SEARCHED:

The person of Thomas, Richard Miller B.M. N/H-032555 11-5-8 Wt 148 Blk Hair and BRO Eyes Soc. Sec. No 222-50-3515 REC'D BY 5

NAME OF OWNER(S), OCCUPANT(S) OR POSSESSOR(S) OF PREMISES AND/OR PLACE(S) AND/OR VEHICLE(S) AND/OR PERSON(S) TO BE SEARCHED:

See above

VIOLATION OF (Describe conduct or specify statute):

Unlawful sexual penetration, Unlawful sexual intercourse, Burglary

PROBABLE CAUSE BELIEF IS BASED ON THE FACTS AND CIRCUMSTANCES SET FORTH IN THE HEREIN ATTACHED "PROBABLE CAUSE SHEET" CONSISTING OF _____ PAGES

Bruce Miller

(Signature of Affiant)

OF Lewes Police9478

Badge/IBM No.

OF

SWORN TO AND SUBSCRIBED BEFORE ME, THIS 30th DAY OF Nov., 1992R. F. Boddy

(Signature of Issuing Authority)

J. P. #3
(Court)

CONTINUATION SHEET

5 PAGE

2

6 COMPLAINT NO.

76-92-1831

52 INVESTIGATING OFFICER

Cpl. Mifflin

had been delivered and V. stated that the Def. had been in the residence for about a half an hour to forty five minutes.

Writer relayed the V. back to her residence once her examination was complete and made arrangements for a resident to stay with same. Several attempts to contact family members were unsuccessful but the manager of the development contacted writer at the V. residence and stated that she would continue to attempt to contact someone.

Writer obtained the clothing that the V. was wearing during the assault, bed linens, pillow cases, the tools that the Def. left behind and the Rape Kit that was completed at the hospital and place same in the evidence locker for processing.

S E C U R I T Y		112992	Lewes	1 OF 16	COMPLAINT NO. 76921831						
7 NAME (LAST, FIRST, MIDDLE)		Pererson, Martha M.		8 RACE, SEX, ED, AGE	W F 44 79	9 DOB.	050115	10 RESD PHONE	UNK	11 BUS PHON#	UNK
12				13 RESIDENT	<input checked="" type="checkbox"/> FULL <input type="checkbox"/> NON <input type="checkbox"/> UNK	14 EMPLOYER/SCHOOL	Retired				
15 LOCATION OF INCIDENT		V#12		16 GRID	17 SECT	18 CTY	19 NO PREM	20 TYPE PREMISE	21 LOC PK		
22 REPORTED		DAY	DATE	TIME	23 OCCURRED	DAY	DATE	TIME	24 INVOLVEMENT		
Sun 112992		1730	Sun 112992	1700	TO Sun 1129	1735			ALCOHOL DRUGS	COMPUTER	
25 CRIME OR INCIDENT NAME & SECTION		Unlawful Sexual Penetration T-11-772 (1)		26 UCR CLASS	1122-10		27 SUP CODE	28 CRIM ACTIVITY			
29 4-F-14 SENT		DATE	30 G.B.	31 POINT OF ENTRY	32 NATURE OF INJURIES		33 WEAPONS MEANS/ATTACK				
<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		N/A	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	E/side of Residence	NO NE		W				
INDICATE RELATIONSHIP TO INVESTIGATION: W-1, W-2 WITNESS, N-1 NOT INTERVIEWED, RP REPORTING PERSON, P PARENT											
CODE	34 NAME (L.F.M.)		ADDRESS		PHONE						
RJ	W-1 Bunting, Paola		Stockley, Georgetown DE		UNK						
W-2	Wright, James B.M.N.H 100521		Apt 8 Hauling Cove Lewes		UNK						
35 4-F-14	TYPE		36 METHOD OF OPERATION		MO. CLAS						
YES	PTIM B.R.HIC		Det entered vic residence without consent, and had sexual intercourse with vic while holding vic down.								
37-1	SUSPECT	<input checked="" type="checkbox"/> DEFENDANT (L.F.M.)	37-2 TYPE ARREST	37-3 V.O.	37-4 RACE, SEX, ED, AGE	37-5 G.B.	37-6 RESIDENT				
	MILLER, Richard		<input type="checkbox"/> ON VIEW <input type="checkbox"/> SUMMONED <input checked="" type="checkbox"/> WARRANT		B M 11/14/39	032558	<input type="checkbox"/> FULL <input type="checkbox"/> NON <input checked="" type="checkbox"/> UNK				
37-7	ALIENESS	37-8 DESCRIPTION			37-9 ARMED WITH						
	Shady Naot Trailor Park	5-8 HT 140 wt SS #222-50-3515			U						
38-1	SUSPECT	<input type="checkbox"/> DEFENDANT	38-2 TYPE ARREST	38-3 V.O.	38-4 RACE, SEX, ED, AGE	38-5 G.B.	38-6 RESIDENT				
			<input type="checkbox"/> ON VIEW <input type="checkbox"/> SUMMONED <input checked="" type="checkbox"/> WARRANT				<input type="checkbox"/> FULL <input type="checkbox"/> NON <input checked="" type="checkbox"/> UNK				
39-7 ADDRESS	N		38-8 DESCRIPTION	A		38-9 ARMED WITH					
40-1	YEAR	MAKE	MODEL	BODY	COLOR(S)	IDENTIFYING CHARACTERISTICS					
40-2	NIA				NIA						
40-3											
40-4											
40-5											
41-1	PROPERTY TYPE	STOLEN - S. DAMAGED - D. RECOVERED - R. SEIZED -			TYPE	ID NUMBER	VALUE				
40-1		N/A					€				
40-2		N/A									
40-3		N/A									
40-4		N/A									
40-5		N/A									
42-1	42 DRUG QUANTITY	43 DRUG MEASURE	44 DATE RECOVER'D	45 VALUE DAMG	46 VALUE REC	47 VALUE STOLEN					
NIA	NIA	NIA	NIA	0	0	0					
48 CONTINUATION OF ABOVE ITEMS											
Unlawful Sexual intercourse T-11-775(a)(2) 1125-11											
49-1	P	M	Mr. Miller coll for yo								
49-2	P	M	Mr. Miller coll for yo								
49-3	P	M	Mr. Miller coll for yo								
49-4	P	M	Mr. Miller coll for yo								
49-5	P	M	Mr. Miller coll for yo								
50-1	50 REFERRED TO	51 SUPERVISOR APPROVAL									
NIA	NIA	NIA									
52 REPORTING OFFICER	NO	LN	53 STATUS	54 EXCEPTIONAL CLEAR	55 NO V. COOPERATIVE						
Kittel 9478 764			<input type="checkbox"/> UNFOUNDED <input type="checkbox"/> PENDING - ACTIVE <input type="checkbox"/> ARREST - JUV. <input type="checkbox"/> DEATH SUSPECT	<input type="checkbox"/> PEND - INACTIVE <input type="checkbox"/> PROSECUTION DECLINED <input type="checkbox"/> EXTRADITION DECLINED	<input type="checkbox"/> JUV NO CUSTODY <input type="checkbox"/> ADMIN SANCTION						
54 REPORTING PERSON SIGNATURE	D.N.O.		<input type="checkbox"/> ARREST - ADULT <input type="checkbox"/> SERVICE CLEAR								
55 SOLVABILITY FACTORS	<input type="checkbox"/> WIT <input type="checkbox"/> MO. <input type="checkbox"/> EVIDENCE <input type="checkbox"/> TKAC STOLEN <input type="checkbox"/> SUSP VEH ID'D	<input type="checkbox"/> SUSP DESCRIBED <input type="checkbox"/> SUSP ID'D	56	57	58						
56 JURISDICTION	<input type="checkbox"/> SUSP LOCATED		OFFICE FOLLOW-UP	CLOSE	DSP 1014 (A) 9						

POL 1020 562 11/24/92 GMS
 REEDERSON, MARTHA M F
 1/8/13 111 3763745
 DR. E.D. PHYS FAH, CR
 14 WELING COVE
 LEWES, DE 19943
 000 000 0000

11-29-92

BEEBE EMERGENCY CENTER

Route 26 (Three miles West of Canal Bridge)
 Millville, Delaware 19945-(302) 539-8450

INSTRUCTIONS TO THE PATIENT: The examination and treatment you have received in the Emergency Department have been rendered on an emergency basis only, and is not intended to be a substitute for or an effort to provide complete medical care. Because it is impossible to recognize and treat all elements of injury or illness in a single Emergency Department visit, it is important that you let your follow-up doctor check you again, and that you report to him any new or remaining problems at that time. X-rays and electrocardiograms interpreted initially by the Emergency Department physician will be officially read by the appropriate specialist. If there is a difference you will be notified. Meanwhile, follow instructions as indicated below.

 CUTS ABRASIONS OR BURNS

- ____ 1. Keep cut or stitches clean, dry and covered.
- ____ 2. See your doctor for any of the following signs of infection: swelling, red streaking, drainage or pus, or fluid, severe or persistent pain or fever.
- ____ 3. Make an appointment with your doctor to have stitches removed or wound examined in _____ days.
- ____ 4. Change the bandage after 24-48 hours and as necessary thereafter.
- ____ 5. Do not remove bandage until seen by your doctor.
- ____ 6. Stitches will absorb and do not need to be removed.
- ____ 7. You have been given a booster dose of tetanus toxoid. These boosters are given routinely now every 5 years, or by special order of a doctor.

 HEAD INJURY

- ____ 1. Notify your doctor immediately for any of the following:
 - a. Eyes that move independently or pupils that are unequal in size.
 - b. Bizarre behavior, change in walking patterns, weakness or numbness in arms or legs.
 - c. Persistent vomiting or high fever.
 - d. Unusual drowsiness, persistent headache or dizziness.
 - e. Bleeding or discharge from ears or nose.
 - f. Loss of consciousness or convulsions.

NOTE: Waken patient hourly for the first 12 hours to check for these signs.

INSTRUCTIONS: If your family physician has questions concerning your treatment he may contact the Emergency Department.

 CULTURES

- ____ 1. If throat culture is positive, you will be notified.
- ____ 2. For all other cultures you will be notified if treatment needs to be changed.

 SPRAINS OR SOFT TISSUE INJURIES

- ____ 1. Elevate the injured part to reduce pain and diminish swelling for _____ day(s).
- ____ 2. Use ice packs or cold compresses for _____ day(s).
- ____ 3. Use heat in the form of hot soaks, hot compresses, hot water bottle or heating pad (10w heat) for 20 minutes every 2-4 hours after _____ day(s).
- ____ 4. Keep the elastic bandage or sling on for _____ days or until pain is relieved. You may remove and rewrap it as necessary. Be sure that it is snug, but not tight. Remove during rest.
- ____ 5. Notify your doctor immediately if the injured area becomes discolored, cold or numb.
- ____ 6. Use crutches for support for _____ days.
- ____ 7. Restrict activity of injured area for _____ days.

 FEVER TREATMENT

- ____ 1. Drink plenty of fluids.
- ____ 2. Bed rest for _____ days.
- ____ 3. Take _____ aspirin and/or _____ tylenol every _____ hours.
- ____ 4. Take temperature every _____ hours.
- ____ 5. Light diet (soups, jello, clear liquids) for _____ day(s).
- ____ 6. Sponge bathe with tepid water for temperature of 104 or more.

 BACK OR NECK INJURY

- ____ 1. Use heat or cold on the injured area whichever seems to help the most.
- ____ 2. Bed rest for _____ days, or until improved.
- ____ 3. Avoid positions and movements that make the pain worse.
- ____ 4. Gentle but firm massage will help clear the soreness.

 CAST CARE

- ____ 1. Cast will be damp for 24 hours. Do not apply pressure or bear weight during this period.
- ____ 2. Keep elevated for 24 hours.
- ____ 3. Call your physician or return to Emergency Department for the following:
 - a. Severe pain or pressure in cast.
 - b. Increasing numbness or coldness of fingers/toes.
 - c. Excessive swelling.
 - d. Bluish color of nails.
- ____ 4. Don't walk on cast.
- ____ 5. Don't remove padding or poke anything down cast.

 GENERAL INSTRUCTIONS

X 1. Make an appointment to see your doctor in _____ days or sooner if you feel worse.
 2. You may take aspirin or similar medication for pain.
 3. Take prescription as directed.
 4. No school or work for _____ days.

E.R. Physician

Inst. Sheet Given By:

Attending Physician

I acknowledge receipt of the above instructions. I understand that I have had emergency treatment only and that further evaluation and/or treatment may be necessary.

Patient Signature (Or Responsible Person)

5/1/15 1:30 PM 2015
E.E. PHYS 1104424 SE
Lawn
30213958
000-0000

PATIENT NAME: Peterson, Martha May EMERGENCY ROOM

TRIAGE NURSE ASSESSMENT

PRIORITY C E U R1

TIME 1755	AGE 85	SEX <input type="checkbox"/> M <input checked="" type="checkbox"/> F	ACCOMPANIED BY <input type="checkbox"/> RESCUE <input checked="" type="checkbox"/> AMBULATORY	<input type="checkbox"/> SELF <input type="checkbox"/> FRIEND	<input type="checkbox"/> OTHER <input type="checkbox"/> SPOUSE <input type="checkbox"/> PARENT	TETANUS HX: <input type="checkbox"/> WITHIN 5 YRS <input type="checkbox"/> OVER 5 YRS	<input type="checkbox"/> NEVER <input type="checkbox"/> UNSURE	PRIMARY PHYS. Saliba
TEMP 96.6°	PULSE 88	RESP 26	B/P 20/10	LMP	WT	ACCIDENT <input type="checkbox"/> HOME <input type="checkbox"/> WORK	<input type="checkbox"/> AUTO <input type="checkbox"/> MC	ALLERGIES

GENERAL APPEARANCE

COLOR <input type="checkbox"/> NORMAL <input type="checkbox"/> PALE <input checked="" type="checkbox"/> FLUSHED	<input type="checkbox"/> JAUNDICED <input type="checkbox"/> CYANOTIC	<input type="checkbox"/> NAIL BEDS <input type="checkbox"/> CIRCUMORAL	MENTAL STATUS <input checked="" type="checkbox"/> CONFUSED <i>disoriented</i>	RESP <input type="checkbox"/> CONS. <input type="checkbox"/> LETH. <input checked="" type="checkbox"/> UNCON MIN. <input type="checkbox"/> ORIENTED YES <input type="checkbox"/> NO <i>for pt time</i>	<input type="checkbox"/> NORMAL <input type="checkbox"/> SHALLOW <input type="checkbox"/> DEEP	<input checked="" type="checkbox"/> RAPID <input type="checkbox"/> SLOW <input type="checkbox"/> LABORED	<input type="checkbox"/> STRIDOR <input type="checkbox"/> AUDIBLE WHEEZE
SKIN <input type="checkbox"/> WARM <input type="checkbox"/> DRY <input checked="" type="checkbox"/> COOL	<input type="checkbox"/> CLAMMY <input type="checkbox"/> EDEMA <input type="checkbox"/> ECCHYMOSIS	<input type="checkbox"/> RASH <input type="checkbox"/> OTHER		PULSE: <input type="checkbox"/> REGULAR <input checked="" type="checkbox"/> IRREGULAR	<input type="checkbox"/> ... <input checked="" type="checkbox"/> STRONG	VISUAL ACTIVITY (IF NEC.) <input type="checkbox"/> RIGHT E <input checked="" type="checkbox"/> LEFT E	<i>N/A</i>

CHIEF COMPLAINT (MECHANISM OF INJURY)

PT found in bed with pt. Cloths were pulled up
 underware on. 3rd floor beside pt. on bed where
 found by St. patro in ua heroes police.
 Pt. disoriented & unable to answer questions @
 this time.

ASSESSMENT OF CHIEF COMPLAINT

pt. disoriented & unable to answer questions @
 this time.

TREATMENT PRIOR TO ARRIVAL

PMH
Hypertension
N/E X2

TRIAGE INTERVENTION

SPLINTS ST DRESSING ICE CERV. COLLAR

REPEAT VS.

TRIAGE NURSE SIGNATURE

NURSING DIAGNOSIS

- ANXIETY
- BOWEL ELIMINATION, ALT. IN:
- COMFORT, ALTERATION IN:
- FLUID VOLUMES, ALT. IN:
- GAS EXCHANGE, ALT. IN:
- INFECTION, POTENTIAL / ACTUAL
- URINARY ELIMINATION, ALT. IN:

TIME IN TREATMENT AREA

1755

FORM NO. 1020
REV. 9-91

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BEEBE MEDICAL CENTER

B-5

EMERGENCY RECORD

REG DATE: 11/29/92 REG TIME: 18:16 DSCH TIME: MED REC #: 800 020 562
 P.T. NAME: PEDERSON, MARTHA M PHONE: 000-
 ADDRESS: 14 HULING COVE LEWES, DE 19958
 TEMP ADDRE:
 BIRTH DATE: 5/01/15 AGE: 77Y SEX: F H/S: S TEMP PHONE:
 BIRTH PLACE: RACE: W SOCIAL SEC. NO: 000000000
 OCCUPATION: EMPLOYER: REL:
 PAT ACCT #: 3763745 LIVING WILL: N PRIMARY PHYSICIAN:
 NEAREST RELATIVE: ASSISTED BY: BET
 ADDRESS: PHONE: 000-
 INSL NAME: 000 POLICY #: GROUP:
 ERAL NAME: POLICY #: GROUP:
 000000

***** AUTHORIZATION FOR EMERGENCY TREATMENT *****

- 1. THIS IS TO CERTIFY THAT THE UNDERSIGNED HEREBY CONSENTS TO AND AUTHORIZES THE ADMINISTRATION AND PERFORMANCE OF ALL DIAGNOSTIC PROCEDURES AND/OR SUCH MEDICAL, SURGICAL OR X-RAY TREATMENT, WHICH IN THE JUDGEMENT OF THE TREATING PHYSICIAN OR HIS AUTHORIZED AGENT MAY BE CONSIDERED NECESSARY OR ADVISABLE.
- 2. NO GUARANTEE HAS BEEN MADE AS A RESULT OF TREATMENTS OR EXAMINATION IN THE HOSPITAL.
- 3. THE UNDERSIGNED UNDERSTANDS THAT A PERSONAL PHYSICIAN IS TO BE SELECTED BY OR ON BEHALF OF THE PATIENT UPON ADMISSION IF HOSPITALIZATION OR FURTHER TREATMENT IS REQUIRED.
- 4. THE UNDERSIGNED HAS READ THE ABOVE AUTHORIZATION AND UNDERSTANDS THE SAME.

DATE _____ TIME _____ A.M. _____ P.M. _____ SIGNED _____ PATIENT _____

JITNESS _____ OR _____ AUTHORIZED PERSON _____

RELATIONSHIP TO PATIENT _____

AUTHORIZATION MUST BE SIGNED BY THE PATIENT,
 OR BY AN AUTHORIZED PERSON IN THE CASE OF
 A MINOR OR WHEN PATIENT IS PHYSICALLY OR
 MENTALLY INCOMPETENT.



FEDERAL BUREAU OF INVESTIGATION
WASHINGTON, D. C. 20535

To: Mr. Jack Warrington
City of Lewes
Director of Public Safety
Lewes Police Department
Post Office Box 227
Lewes, Delaware 19958

Date: June 9, 1993

FBI File No. 95A-HQ-1042998

Lab No. 21231024 S WP RQ

Reference: Communication dated December 30, 1992

Your No. 76-92-1831

Re: THOMAS R. MILLER - SUSPECT;
MARTHA M. PEDERSON - VICTIM;
RAPE/BREAKING AND ENTERING

Specimens received: December 31, 1992

Specimens personally delivered by Sergeant Steve Swain on
December 31, 1992:

ITEMS FROM VICTIM:

Q1-Q2 Vaginal swabs
Q3-Q4 Vaginal slides
Q5-Q6 Oral swabs
Q7-Q8 Oral slides
Q9 Genital swabbings
Q10 Pubic hair combings
Q11 Slip
Q12 Gown

B-6

Q13 T-shirt

K1 Blood sample from victim

K2 Head hair sample from victim

K3 Pubic hair sample from victim

ALSO SUBMITTED:

Hospital report

ITEMS FROM SUSPECT:

Q14 Pubic hair combings

Q15 Shorts

K4 Blood sample from suspect

K5 Head hair sample from suspect

K6 Pubic hair sample from suspect

K7 Saliva sample from suspect

ITEMS FROM CRIME SCENE:

Q16-Q19 Four pillowcases

Q20 Sheet

Q21 Mattress cover

Result of examination:

The known blood samples were grouped as follows:

<u>SPECIMEN(S)</u>	<u>RESULTS</u>
K1 PEDERSON	"PGM 2+, Hp 1, Gc 1F-1S"
K4 MILLER	"Hp 2-1, Gc 1F"

An attempt to further characterize specimen K4 was inconclusive.

No blood or semen was found on specimens Q1 through Q9, Q11 or Q12.

No hairs like the pubic hairs of the suspect were found in specimen Q10.

No hairs like the pubic hairs of the victim were found in specimen Q14.

The hairs and fibers have been removed from the remainder of the submitted items and have been preserved for possible future comparison. In view of the fact that the suspect was arrested in the victim's bed with the victim, no further hair or fiber examinations are being conducted.

The submitted items will be temporarily retained in the FBI Laboratory until picked up by a representative of your office.

A. DEAN BETTS
ROSEMARY B. BEAUREGARD

Betts & Beauregard, P.A.

ATTORNEYS AT LAW
15 SOUTH RACE STREET
PO. BOX 770
GEORGETOWN, DELAWARE 19947

TELE: (302) 856-7755
FAX: (302) 856-4975

January 18, 1994

Mr. Thomas Miller
Delaware Correctional Center
P. O. Box 500
Smyrna, DE 19977

Dear Thomas:

I am in receipt of your letter dated January 13, 1994. At this point and time, considering the comments you made in this letter, I must assume that you believe that a fraud has been committed upon you based on the fact that you believe the transcripts supplied to you are not accurate transcripts of the proceedings that took place before the court. Is it your position that somebody has made up what is transcribed in these transcripts? If that is your position, please advise as to specifics. Eileen Kimmel, who is the court reporter, has attached a certificate to each of the transcripts indicating that these were the true and accurate transcript of the proceedings that took place on those dates. Ms. Kimmel has been a court reporter for many years with the Superior Court and is sworn to accuracy in these reports.

My understanding from your letter is that you felt that the Robinson plea that was entered was tainted based on the fact that you did not have an FBI report until the day of your plea. It is my understanding that the FBI report has found that there was no evidence of semen presence on Mrs. Pederson and therefore there is inconclusive evidence medically as to whether penetration occurred. Please be advised that an inconclusive report does not indicate that you did not have intercourse with Mrs. Pederson, it merely states there is nothing medically evident to indicate that you did. Once again it comes down to your word against Mrs. Pederson's word.

Basically it is your belief that the description of the crime given by the prosecutor was inaccurate based on information you had subsequently obtained. If Mr. Barnett was aware of the information you have spoken of prior to your plea, and if he gave you false information which you relied on to take that plea, then there maybe some basis for withdrawing your plea. At this point it would seem that everything you have raised in your letter was information that was obtained after the plea was entered either through contact by you with Mrs. Pederson or by your counsellor with Mrs. Pederson. Is this a correct assumption on my part?

1 P R O C E E D I N G S

2 MR. ADKINS: Your Honor, the next case we
3 would like to take is State versus Richard T. Miller.
4 The Information is Thomas Richard Miller.

5 Mr. Miller is represented by Mr. Barnett. We
6 have been able to enter into a Plea Agreement whereby it
7 is my understanding that the defendant will be pleading
8 guilty to a lesser-included offense of Count 1 of the
9 Information, which will be unlawful sexual intercourse
10 in the second degree. He will also be pleading guilty
11 to Count 2, burglary in the first degree. We will be
12 dropping the remaining charge, Count 2, unlawful sexual
13 penetration in the second degree. We are asking for a
14 presentence investigation. I tender to the Court the
15 original Plea Agreement signed by all parties.

16 THE COURT: Place the defendant under oath.

17 (Whereupon, the defendant, THOMAS R. MILLER,
18 was duly sworn.)

19 MR. BARNETT: Good morning. The Court will
20 pardon my speech this morning. I have an infected jaw,
21 and it is a little swollen. So I will try to speak
22 clearly.

23 I went through the Plea Agreement which has

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OFFICIAL COURT REPORTER

1 Q Are you aware whether or not Dr. Angel
2 observed that and noted that?

3 A I believe that Dr. Angel did note that he saw
4 a small laceration in that area.

5 Q Did he note any bleeding in that area?

6 A I don't know. I would have to read his
7 report.

8 Q Do you remember your testimony in another
9 proceeding yesterday --

10 A Yes.

11 Q -- when you testified that, in fact, he had
12 not noted that bleeding? L1E1)

13 MR. ADKINS: May we approach, please?

14 THE COURT: I am going to sustain the
15 objection. If she wants to refresh her recollection
16 through documents, or things of that nature, she may do
17 so.

18 MR. ADKINS: I prefer to approach.

19 (Whereupon, counsel approached the bench
20 and the following proceedings were had out of
21 the hearing of the jury:)

22 MR. ADKINS: I do not know how this should be
23 handled, but I can tell you that this witness'

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1 reluctance to say anything whatsoever about what the
2 doctor saw is because I instructed her today that that
3 whole side of the report is out and she cannot mention
4 it. I told her she cannot mention it, and I know that
5 that is what she is struggling with right now.

6 THE COURT: I will take the jury out and tell
7 her that it is cross-examination and that if she needs
8 to refer to any of those, she may do so. And you are
9 going to take your risk if she answers something you do
10 not want.

✓ why shouldn't she

11 MR. ADKINS: I also told her that she could
12 not say the words "sexual assault" or "rape kit". So
13 she has a whole list of things that she is thinking she
14 is not supposed to say, pursuant to the Court's ruling,
15 and she is trying to decipher this as the questions
16 come.

17 THE COURT: Let me ask you this. What you
18 are trying to get in is that Dr. Angel's report does
19 not say any --

20 MS. BEAUREGARD: Blood. Which is consistent
21 with her report.

22 THE COURT: I understand that. But a report
23 unanswered. I understand you are getting into that

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OFFICIAL COURT REPORTER

1 area.

2 MS. BEAUREGARD: My preference is to refresh
3 her memory based on her sworn testimony yesterday,
4 which I attempted.

5 THE COURT: To refresh somebody's
6 recollection, you usually put something before them.

7 MR. ADKINS: The last thing I want her to say
8 is, "I was told I couldn't say this in front of this
9 jury." I do not need her to blurt that out.

10 (Whereupon, counsel returned to the trial
11 table and the following proceedings were had
12 in open court:)

13 THE COURT: Ladies and gentlemen, I am going
14 to ask you to go in. Do not even sit down. If you go
15 in there and walk around the table twice, we will be
16 ready.

17 (Whereupon, the jury returned to the jury
18 room and the following proceedings were had
19 in open court:)

20 THE COURT: Counsel have basically made the
21 Court aware that based upon the rulings yesterday, you
22 have been advised not to say certain things, such as
23 the rape kit and to mention sexual assault. The direct

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1 to the defendant, in the weighing and balancing, that there is
2 no need for you to have those characterizations.

3 MR. ADKINS: In connection with that, Your Honor, I
4 stipulated to an F.B.I. report, basically that there was no
5 semen found, that type of thing, and I am not sure whether that
6 rape kit is mentioned in that.

7 THE COURT: Well, the mentioning of that I don't have
8 a problem with, because that is the purpose of the rape kit,
9 for later analysis. What I don't want in my ruling of what is
10 coming in as far as ~~the historical hearsay, the rape kit to add~~
11 upon the significance of anything. The State has already
12 agreed that the sexual assault diagnosis won't come in so I
13 guess the majority part of the door is open as to those areas
14 in Johnson, and Exhibit Number 1 as to my ruling under 403
15 limiting the introduction of 2, and I am only referring to the
16 top page of 2. I haven't looked at anything else. That is
17 what we have used.

18 Are we all on the same page?

19 MS. BEAUREGARD: Your Honor, I think they did refer
20 to some times on Page --

21 THE COURT: Times are fine, and things of that
22 nature. Times are pertinent, times are relevant, they are
23 relevant to my ruling and relevant to the jury for purposes of
24 making a final determination.

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1 And, Counsel, if you would like -- I haven't seen one
2 -- but if you want me to prepare an instruction concerning any
3 of these rulings you can consider it. I am not saying I will,
4 I am not saying I won't. I am just basically saying the Court
5 will entertain them, some cautionary instructions.

6 MS. BEAUREGARD: Can we have some clarification as to
7 Document Number 1, Your Honor, and by that I am referring to
8 the rape kit.

9 THE COURT: Yes.

10 MS. BEAUREGARD: Your Honor has ruled that all of
11 that will be admissible --

12 THE COURT: Except the title at the top.

13 MS. BEAUREGARD: Except for the top part. And that
14 is on the basis of a medical document, a medical record?

15 THE COURT: It is based on the three hearsay
16 exceptions that I find firmly rooted, and that is 1, 2 and 4 of
17 803.

18 WAS NO PENETRATION IT'S NOT
19 She said she took this immediately thereafter, and therefore I
20 think this is includable because the penetration would be
21 important medical diagnosis and treatment. The fact that she
22 states these other things are more important to 1 and 2 as
23 opposed to medical treatment.

24 MS. BEAUREGARD: Thank you for that clarification.

NURSE REPORT

4:35 pm

B-1

Joint - reviewed - Court ruling
was previously cited
by counsel

Reports made by
Medical - admirable
Joint is satisfied ^{other} qualified witness - subject to editing
but complying witness
Sister

Joint Exhibits 5:00 pm.

11 - Report - ^{Beebe Hospital} Rope kit - except top
2 - Report - K R - Beebe Hospital

Sexual Assault Form - not to go before jury
Portion on left side of F

* 2 - Needs editing / white out
Document should not come in itself
first testimony

Rope kit should not be returned

Sexual Assault Diagram - not to come in

Motion to Dismiss to be heard
at 8:45 am.

NURSE WRITE REPORT

A-79

1 Court.

2 THE COURT: Do you have the person who took that
3 medical record?

4 MR. ADKINS: What we have, Your Honor, is registered
5 nurse, Lynn Morin, who has signed each of the handwritten pages
6 of this medical record.

7 On the first page, "Patient found in bed."

8 "Patient's clothes pulled up." "No underwear on." "Male
9 beside patient on bed when found by police."

10 THE COURT: The pertinent question, Mr. Adkins, is
11 the hearsay coming from the complainant?

12 MR. ADKINS: Okay.

13 THE COURT: What was the mechanism where they are
14 getting this from? Is he getting this from the police or
15 somewhere else?

16 MR. ADKINS: I think the first page is from the
17 police. I will drop my application on that.

18 THE COURT: I think if you are going to consider it
19 under 4 you have to do it from her to a medical treater.

20 MR. ADKINS: That is correct.

21 The second page, this is in the left-hand column,

22 there is a quotation at the top, "I was raped." From my
23 knowledge and information (this was actually handwritten by Dr.

24 Angel. We tried to serve Dr. Angel but were unable to because

BY THE DOCTOR

NURSE WRITTEN REICKL

PROSECUTOR

A-80

1 he has gone on a two and a half to three week continuing
 2 medical education trip. Dr. Angel is not here. Lynn Morin,
 3 who signed this medical document, registered nurse, she
 4 actually heard Ms. Pederson say, "I was raped," because she was
 5 there with the doctor the whole time.

6 The other note here of the doctor deals with, well,
 7 for example, "Genitalia. Superficial lacerations over
 8 posterior fascia," which is the area between the vagina and the
 9 rectum. These notes, this handwriting, is actually Lynn

10 Morin's HEARSAY, SHE WROTE IT REPORT Herself

11 This part saying, "Patient now more coherent, able to
 12 explain what happened," --

COURT DISCRESSION

13 THE COURT: Mr. Adkins, I am going to cut you off. I
 14 think on this one, I am going to listen to the witnesses, see
 15 if they stand the test of cross examination, and then make a
 16 ruling on that. That will take place outside of the jury. I
 17 am uncomfortable with the factual pattern that I have got right
 18 now, as being able to make a ruling. I would like to know the
 19 circumstances, the emotional state of the declarant, and things
 20 of that nature before making a decision on that.

21 MR. ADKINS: May we do that prior to starting, call
 22 this witness in for questioning?

23 THE COURT: Well, we may as well let the jury go
 24 then, it is 3:30, have them come back tomorrow, because it

B-27

1 much younger. This person comes to No. 14 Huling Cove
 2 and gets into that apartment with Miss Pederson
 3 deceptively by saying that he is looking for someone
 4 else. He refuses to leave. The dinner comes from the
 5 Moose Lodge. He takes the dinner.

6 Then he rolls Miss Pederson in the wheelchair
 7 into the bedroom. He has her in the bed with her
 8 clothes pulled up, and he is completely naked, and he
 9 penetrates her vagina with his penis. That is that man
 10 over there (indicating). ~~PROSECUTOR LIED THIS WHOLE STATEMENT (REASON) POLICE AND NURSE LIED SHE ALSO WRITTEN REPORT~~
 11 what are the charges in this case? Count 1.
 12 unlawful sexual intercourse in the first degree.

13 "Thomas Richard Miller, on or about 29th
 14 day of November, 1992, in the County of Sussex,
 15 State of Delaware, did intentionally engage in
 16 sexual intercourse with another person, Martha
 17 Pederson, without her consent, and the defendant
 18 was not the victim's voluntary social companion
 19 on the occasion of the crime and she had not
 20 permitted him sexual intercourse on the previous
 21 twelve months, in violation of Title 11, Section
 22 775(a)(2) of the Delaware Code."

23 Count 2, burglary in the first degree:

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1 "Thomas Richard Miller, on or about the 29th
 2 day of November, 1992, in the County of Sussex,
 3 State of Delaware, did knowingly enter unlawfully
 ^{The time was 3:13 P.M.}
 4 in a dwelling at night belonging to Martha
 5 Pederson with intent to commit a crime, unlawful
 6 sexual intercourse in the first degree, while
 7 therein, and while in the dwelling, he caused no
 ^{Physical injury again he (PROS) LIED}
 8 physical injury to Martha Pederson, who was not
 9 a participant in the crime, in violation of Title
 10 Section 826(2) of the Delaware Code."

11 The State is going to prove this to you
 12 beyond a reasonable doubt, beyond any shadow of a
 ^{There's no evidence period. again LIED TO JURY}
 13 doubt, with overwhelming evidence. We are going to
 14 call the sister of Martha Pederson, Alice Bickling, to
 15 the stand. She is going to tell us how old Martha
 16 Pederson was as of November 29th, and she is going to
 17 tell us another fact. She is going to tell us that her
 18 sister did not survive to the date of this trial. She
 19 died on September 16, 1993. But the prosecution did
 20 not die. The charges did not die.

21 ^{AGAIN NO} We are going to show you overwhelming
 ^{evidence.}
 22 evidence, despite the fact that Miss Pederson is now
 ^{dead.}
 23 Miss Bickling will be able to tell you a little

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B-32

1 She interviewed her for the purposes of
2 medical diagnosis and treatment and gathering
3 information for the doctor. She helped examine her.
4 She saw a reddened area around Miss Pederson's neck.
5 She saw a small laceration in the -- I am not too good
6 with medical terms -- perirectal area. Miss Morin will
7 be able to explain what that is. An area in between
8 the vagina and the rectum.

9 She had to interview her about things like
10 penetration. Miss Pederson told her that her vagina
11 was penetrated. That is what sexual intercourse is,
12 penetration of the penis into the vagina. It is
13 penetration, and that is what we have in this case.
14 There does not have to be ejaculation; just
15 penetration.

16 As a matter of fact, when Miss Morin was
17 interviewing Miss Pederson, she was asked about whether
18 there was ejaculation by that man (indicating). She
19 said she was not sure about that. Samples were taken
20 -- we will tell you this right up front -- and sent to
21 the F.B.I. We are stipulating to an F.B.I. report in
22 this case. There was no semen found on the vaginal
23 swabs.

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1 But that is not pertinent to the fact of
2 whether there was penetration. Miss Pederson said that
3 there was penetration. He was practically caught in
4 the act. That there is no semen makes no difference.
5 He did not get to the point of ejaculating semen,
6 apparently, into this lady's vagina.

7 As the Judge said, just use your common
8 sense, and at the end of this case, you will have no
9 doubt whatsoever that this man is guilty as charged of
10 both counts and that he violated this elderly lady in
11 the last years and in the calm and peace of her life.

12 Come back and send a message to him with a guilty
13 verdict that says, "Yes, we know beyond any reasonable
14 doubt that you did this despicable act." LEADING JURY
15 Thank you. (PROS) WITH FALSE INFORMATION TELLING THEM TO FIND ME
GUILTY BEFORE I'M TRIED

16 MS. BEAUREGARD: I would reserve my right to
17 make my opening statement at the close of the State's
18 case.

19 THE COURT: Ladies and gentlemen, what that
20 basically means is that both of the attorneys have the
21 opportunity to talk to you. The defense has the
22 opportunity to talk with you at this point in time, or
23 they can wait until the end of the State's case and

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Greater Pottstown Counseling Service


Pennsylvania Center

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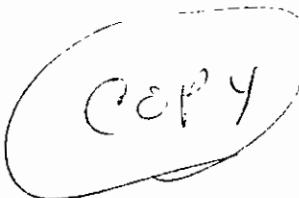
DIRECTOR

Rev A. Smith, Sr. D Min

*"Perfect Love Casteth Out Fear" — I John 4:18b***Delaware Center**

P.O. Box 272, 337 Highway One
Lewes, Delaware 19958
(302) 645-6868

July 1st, 1993



Mr. Charles Oberly, III,
Attorney General
State Office Building
820 N. French Street
Wilmington, Delaware 19801

RE: Thomas Miller

Dear Mr. Oberly:

I am writing to you again, because I have come to believe you are a fair man. I am beginning to believe that truth and justice are being over-looked in the effort to get a conviction. I feel it is the Attorney General's responsibility to prove people innocent as well as to prove them guilty. I feel truth is what needs to be found.

From my observations of some of the individuals who hold the position of Deputy Attorney General, they could care less about the truth. If an individual is charged, guilty or not, they are going to convict them. If they cannot convict them, they will keep them in prison for months longer than necessary to prove their point.

Thomas Miller, in my opinion, is one of these individuals who is not being treated fairly. Information was withheld from him until after he was sold in the court room a plea.

In the group therapy which I conduct, Thomas said he was not going to accept any plea because he was innocent. After his return from court, he said he was pressured and tricked by his own attorney and the AG into accepting a plea of ten years. After he accepted the plea, he was given his copy of the FBI Report, which said no evidence was found. Mr. Thomas is charged with rape and breaking and entering.

I did not know what to believe, so I called his victim on the phone. [REDACTED] He knocked on the door and she said, "Come in." Is that breaking and entering? A neighbor evidently called the police and this is when the charges began to multiply.



~~EXHIBIT~~

EXHIBIT ~~B~~ B-9

Charles M. Oberly, III, July 3, 1993, Page 2.

When I spoke with the victim, I said to her. Remember, this is suppose to be a rape victim. "Do you know they are giving Thomas Miller ten years in prison for what happen at your home." She said, "Oh no! That is too much." Did you ever hear a rape victim say ten years in prison was too much for a rape?

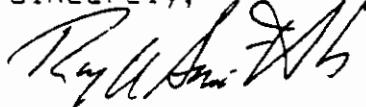
I then said to this so called victim. "How much time in prison do you think he should get?" She said, "He has had enough." I said, "What do you mean by that?" She said, "The time he has already spent in prison is enough." I said, "Do you think he should be set free?" She said, "yes." This women, in my professional opinion was never raped.

I have written to Mr. James Adkins and requested his help. However, I will be surprised if I hear from him, unless you put pressure on him.

I am one of many citizens who are getting more and more concerned about how much "Justice" is in the Justice system. Some are suggesting a "Court Watch", where interested citizens monitor the court hearings and write reports on their fairness. I hope something can be done within the system itself.

Thank you for whatever you can do to get those who work from your office to seek truth more than a conviction.

Sincerely,



Roy A. Smith, Sr., D.Min., Ed.M.
Executive Director/Therapist

CC: Judge William Swain Lee
Thomas Miller
File

(B-113)

1 AFTERNOON SESSION

2 (At 1:30 o'clock p.m., trial in the above-
3 entitled matter was reconvened in open court.
4 at the conclusion of the luncheon recess.)

5 MS. BEAUREGARD: Your Honor, I have had an
6 opportunity to review the ten pages of police reports
7 that were not supplied to defense counsel pursuant to
8 the waiver of preliminary hearing agreement. I have
9 had an opportunity to briefly skim the contents of
10 these documents, although I have not had an opportunity
11 to review them with Mr. Miller.

12 In reviewing these documents, certain
13 POLICE WITHHOLDING EVIDENCE
14 supplemental pages referred to a piece of evidence, in
15 particular, a pair of underwear, that was retrieved by
16 Patrolman Ritter in the sally port at S.C.I. That
17 evidence was not supplied to me at the time I went out
18 to review the evidence last week, and it is my NO CLOTHING
19 understanding that they cannot find that article of
20 clothing at this point. I do not know what relevance
21 it is, except that this is an unlawful sexual inter-
22 course case and it is a piece of underwear, and I have
23 to assume that it has some relevance.

At this point, I am concerned that the

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1 defense was not supplied with the reports in a timely
2 fashion, and I am concerned that there now appears to
3 be an article of clothing that is missing from the
4 evidence locker. Based on my inability to effectively
5 review these documents --

6 THE COURT: I will give you an opportunity.
7 We will advise the jury that matters have to be taken
8 up, and if they would like to take a walk around town,
9 rather than being in there for an hour, we will give
10 them a break for another hour. The Court also wants a
11 copy of what was provided to defense counsel so the
12 Court can examine it.
--

13 MS. BEAUREGARD: In connection with the
14 evidence, several copies that I have will not come out
15 on a copy machine.

16 THE COURT: You look at whatever is available
17 to be read. After you looked at it, give me a copy of
18 what there is. If there is anything that is relevant
19 that I cannot read on there, I am sure you will point
20 that out to me.

21 As to the missing underwear, I will cross
22 that bridge when I come to it. The State has
23 stipulated to that which is favorable. In other words,

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(B-115)

1 I think they stipulated that there was no semen. ~~none~~

2 MS. BEAUREGARD: The entire F.B.I. report.

3 THE COURT: No semen was located. That would
 4 be the most favorable inference that could be deemed
 5 for the defense. In other words, if there was semen,
 6 it could be potentially -- ~~none~~

7 MS. BEAUREGARD: Culpatory.

8 THE COURT: If there is not semen, it is
 9 exculpatory, and they are saying they cannot find any
 10 semen. You think about your position on that, and,
 11 Mr. Adkins, you think about your position on that. We
 12 will go ahead and take an hour and let her digest
 13 eleven pages. It is not a one-page report.

14 MR. ADKINS: There is one thing that you have
 15 not been told so far. Yes, there is one supplement
 16 report that mentions, back on December 1st, Officer
 17 Ritter's getting a call and going out to the prison and
 18 getting this pair of briefs. We can put him on the
 19 stand maybe sometime during this hour. This can all be
 20 explained so that you know this underwear has nothing
 21 to do with the case. That is the first thing. You
 22 will know that the underwear has nothing to do with
 23 this case. trying to set-up holding evidence.

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B-116

1 Then secondly, the other ten pages -- and
2 Miss Beauregard can stand right here and correct me if
3 I am wrong -- all have to do with when Sergeant Swain.
4 "Sergeant Swain picked up the evidence and took it to
5 the F.B.I. I went and got it to the F.B.I. I took
6 Miss Pederson to the hospital and they took blood
7 samples." There is nothing in these reports that has
8 any substance of any interview. It is a chain of
9 custody. That is why it should not take a full hour to
10 digest.

11 MS. BEAUREGARD: I will take half an hour.
12 But I think I should have an opportunity to review it
13 with Mr. Miller.

14 THE COURT: I think you should, too. Now
15 that you know what it is, it is half an hour. You let
16 me have a copy of it. Deliver it to chambers.

17 Tell them that we are not going to get
18 started until 2:00 o'clock or maybe a little after.
19 Find out if they want sodas or whatever. The State is
20 buying. I do not mean Mr. Adkins. I mean the State of
21 Delaware.

22 MR. ADKINS: I also want to state for the
23 record, although I know this does not play a major part

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1 in the Court's ruling at all, that these are reports
2 that the Attorney General's Office did not have in its
3 file whatsoever. *The police withholding reports*

evidence

4 THE COURT: I understand. Thank you.

5 (Whereupon, a brief recess was taken, at
6 the conclusion of which the following proceed-
7 ings were had in open court:).

8 THE COURT: Where are we?

9 MS. BEAUREGARD: I had an opportunity to
10 review the documents with Mr. Miller. They are pretty
11 much as Mr. Adkins has set forth, transporting and
12 collecting evidence, and such. I believe we have had
13 an opportunity to review them, and I thank the Court
14 for letting Mr. Miller review those documents.

15 THE COURT: All right, so we are starting
16 back then with the officer on the stand in cross-
17 examination; is that correct?

18 MS. BEAUREGARD: Yes.

19 THE COURT: Bring the jury in.

20 (Whereupon, the jury returned to the jury
21 box and the following proceedings were had in
22 open court:)

23 THE COURT: Ladies and gentlemen, I

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Ritter - Cross

B-118

1 apologize. I know that it is a beautiful day out there
2 and you have those windows and you are looking out
3 there and you are stuck in here. The only thing I can
4 do is basically say that it is not a big surprise,
5 because I told you at orientation that this would
6 happen. It is the nature of the beast, especially in
7 criminal trials. I apologize for the inconvenience to
8 you.

9 Ms. Beauregard?

10 MS. BEAUREGARD: Thank you, Your Honor.

11 CROSS-EXAMINATION (Cont'd))

12 BY MS. BEAUREGARD:

13 Q I believe where we left off, Officer Ritter,
14 is I had asked you when your next contact was with
15 Miss Pederson after the 29th of November, and you had
16 testified that you thought it was sometime in December?

17 A That is correct.

18 Q You have had an opportunity to review your
19 report. Can you state when that was?

20 A Not the exact date, no, without walking back
21 over and looking at my report.

22 Q Approximately when was it?

23 A I believe it was the 10th.

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Swain - Direct

B-190

1 THE COURT: Call your first witness.

2 MS. BEAUREGARD: I would call Detective Steve
3 Swain to the stand.

4 Whereupon,

5 STEVE T. SWAIN

6 was called as a witness by and on behalf of the
7 defendant and, having having been first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. BEAUREGARD:

11 Q Good afternoon, Detective Swain. You are
12 employed by the Delaware State Police; is that correct?

13 A Yes, I am.

14 Q And in what capacity are you employed?

15 A I am an evidence technician.

16 Q And what exactly does an evidence technician
17 do?

18 A Basically, I go to crime scenes and collect
19 evidence.

20 Q Were you involved in the compiling of
21 evidence to be submitted to the Federal Bureau of
22 Investigation in regard to the case of State versus
23 Thomas R. Miller?

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1 A Yes, I was.

2 Q And in what capacity were you involved in
3 that?

4 A Officer Ritter came to my department and
5 asked for assistance.

6 Q And did you assist him?

7 A Yes, I did.

8 Q And in what way did you assist him?

9 A Basically, what I did, you know, I instructed
10 him what evidence should be taken to the F.B.I. Lab for
11 examination.

12 Q And what did you instruct him?

13 A All right, he brought several different items
14 over, and, basically, I took a look at it. And the
15 items that I picked that he should take over were the
16 victim rape kit, and suspect kit, and some items of
17 clothing, and bed sheets, et cetera.

18 Q What is included in these kits that you refer
19 to?

20 A Basically, they can be swabbings that are
21 taken from the victim. There can be hair cuttings,
22 hair pullings. Things like that.

23 Q And do you know what specific things were

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OFFICIAL COURT REPORTER

1 taken in this case?

2 A Well, the kit itself I looked at briefly. I
3 am not exactly sure what was in it.

4 Q I am going to ask you to look at this
5 document and tell me if you can identify it, and then I
6 will ask you if that helps refresh your memory as to
7 what was included in those kits?

8 A Yes, it does.

9 Q Can you tell the jury exactly what type of
10 evidence was gathered and what type of evidence was
11 analyzed by the F.B.I.?

12 A All right. What was sent over was four sets
13 of vaginal slides. That is where they take a swab and
14 put it on an actual glass slide and send it to the lab.
15 They also did the same thing orally to the victim and
16 genetically. That is on the outside. Also took pubic
17 hair combings. That is where you collect suspect
18 combings and from the victim. And the victim's slip, a
19 gown was sent, a tee-shirt, and then a blood sample
20 from the victim was also collected. Additionally,
21 other blood samples were collected, too.

22 Q And those samples, were they collected from
23 both Mrs. Pederson and Mr. Miller?

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1 A Yes, they were, and, also, there were head
2 hair samples and pubic hair samples.

3 Q There was blood?

4 A Yes.

5 Q Head hair?

6 A Yes.

7 Q Pubic hair combings?

8 A That's right.

9 Q Saliva?

10 A That's correct.

11 Q Vaginal swabs?

12 A That's right.

13 Q Oral swabs?

14 A Yes.

15 Q And some articles of clothing?

16 A That's correct.

17 Q Why do you collect such evidence in a case
18 such as this, an unlawful sexual intercourse case?

19 A Basically, when a sexual-type assault takes
20 place, there is a transfer of evidence, and that can be
21 blood, that can be semen, it can be hair, it can be
22 fibers. A lot of times these things can be located and
23 identified to a particular suspect, particularly with

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Swain - Direct

B-194

1 DNA testing.

2 Q So when you say "a transfer of evidence",
3 that means that hairs from one individual may get
4 transferred onto the other?

5 A That's right.

6 Q Did you submit these samples to the F.B.I.?
7 Did you transmit them yourself?

8 A Yes, I did.

9 Q And the results of the F.B.I. analysis, when
10 are they dated?

11 A All right, the report here is dated June 9,
12 1993.

13 Q Are you familiar with these types of results?
14 Have you dealt with those as an evidence technician in
15 your work?

16 A Yes, I have.

17 MS. BEAUREGARD: I guess I should have this
18 marked as a defense exhibit for identification.

19 MR. ADKINS: No objection for it to go into
20 evidence.

21 THE COURT: Defense Exhibit No. 1.

22 MS. BEAUREGARD: I guess it would be No. 2.

23 THE COURT: Whatever the next exhibit.

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Swain - Direct

B-195

1 THE CLERK: Admitted as Defendant's Exhibit
2 No. 1.

6 BY MS. BEAUREGARD:

7 Q I believe I had asked you if you know how to
8 read the results of these tests?

9 A Yes, I do.

10 Q If you can turn to the second page of this
11 report, at the bottom of that page, where it has
12 "Result of Examination". Would you please interpret
13 what that means?

14 A It says down here, "The known blood samples
15 were grouped as follows: K-1, Pederson," and she has a
16 different blood profile there. That is basically
17 standard serology, which each one of them means, I
18 don't particularly know. But they are definitely
19 different here. These are not DNA comparisons.

Q These are just blood types, blood samples?

21 A Right.

22 Q And what was the conclusion of the testing of
23 the F.B.I. in regard to the blood samples?

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Swain - Direct

B-196

1 A Basically, they said no blood or semen was
2 found in Specimens Q-1 to Q-9, and Q-1 to Q-9 were all
3 vaginal swabs or oral swabs. the swabbings.

4 Q So based on your terminology, a transfer of
5 evidence, based on these tests, none of that evidence
6 transferred onto the samples that were submitted to the
7 F.B.I.?

8 A There is no blood or semen located.

9 Q How about Q-10, which are the pubic hair
10 combings?

11 A There was also no pubic hairs of suspect
12 found in Specimen Q-10.

13 Q Specimen Q-10 are specimens of pubic hairs of
14 Mrs. Pederson; is that correct?

15 A Yes, that's correct.

16 Q Likewise, the next line, what were the
17 findings on the next line?

18 A "No hairs like the pubic hairs of the victim
19 were found in Specimen Q-14." That would have been
20 from the defendant.

21 Q So, again, there was no transfer of that
22 particular type of evidence on the sample submitted?

23 A That's right.

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Swain - Direct

B-197

1 Q Is there any indication on this report as to
2 whether or not the head hairs from Mrs. Pederson or
3 Mr. Miller were analyzed or found?

4 A It basically says here, "In view of the fact
5 that the suspect was arrested in the victim's bed with
6 the victim, no further hair or fiber examinations are
7 being conducted."

8 Q So, basically, that means that, "We are not
9 going to conduct any further investigation, other than
10 what we have done above"?

11 A That's correct.

12 Q So all of the specimens that the F.B.I. chose
13 to examine, pubic hair combings from both Mr. Miller
14 and Miss Pederson and the search for blood or semen,
15 all of those came back negative; is that correct?

16 A That's correct.

17 Q You made a statement earlier that a lot of
18 times in a case like this there is a transfer of
19 evidence?

20 A I am just going by all the cases I am
21 involved in. There is a lot of times when there is
22 not.

23 Q So sometimes there is and sometimes there is

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Swain - Direct

B-197

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Swain - Cross

B-198

1 not, or a lot of times there is? I guess I am asking
2 you to interpret.

3 A It just depends upon what extent the activity
4 continued, how long. The longer it occurred, the more
5 evidence you would have.

6 Q Based on the F.B.I. report that you have just
7 testified from, there is no objective evidence, as far
8 as the samples submitted, that would indicate that any
9 contact occurred?

10 A By "objective" do you mean -- you said
11 "objective evidence". What do you mean?

12 Q Objective as samples that were submitted, the
13 hair fibers and those types of things?

14 A There was none located to connect, that's
15 correct.

16 MS. BEAUREGARD: Your Honor, I have nothing
17 further of this witness.

18 CROSS-EXAMINATION

19 BY MR. ADKINS:

20 Q Good afternoon, Detective Swain.

21 A Good afternoon.

22 Q You said the longer the activity occurs, the
23 more chance that you might be able to get some

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OFFICIAL COURT REPORTER

Swain - Cross

B-198

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23 more chance that you might be able to get some

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OFFICIAL COURT REPORTER

Swain - Cross

B-199

1 evidence?

2 A That's correct. With two rubbing up against
3 each other, you have more hair and fiber exchange.

4 Q Where do you get fiber exchange?

5 A Well, from clothing. But if they are nude,
6 they won't.

7 Q That is what I mean. How about if the person
8 is totally naked? Why would you expect to have a fiber
9 transfer?

10 A Well, you wouldn't.

11 Q You went through these items that went to the
12 F.B.I., Q-1 through Q-9. Oral swabbings are four of
13 these items, aren't they, Q-5, Q-6, Q-7, and Q-8?

14 A That's correct.

15 Q If this happens to be a case where there is
16 not even the slightest indication that there was
17 anything done orally, no penis put in anybody's mouth,
18 why would you expect to have any positive type of
19 evidence from an oral swab?

20 A You wouldn't.

21 Q No blood was found. On vaginal swabbings and
22 slides, what kinds of blood would you be looking for as
23 an investigator and evidence technician for that type

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OFFICIAL COURT REPORTER

Swain - Cross

B-199

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23 an investigator and evidence technician for that type

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OFFICIAL COURT REPORTER

Swain - Cross

B-200

1 of person? What type of blood would you be looking to
2 find from a vaginal swabbing, for example, from
3 Miss Pederson?

4 A Well, it could be from injury.

5 Q Or how about from the defendant?

6 A That could be possible, too.

7 Q If there is no evidence that the defendant's
8 penis is bleeding, would you expect to find blood on a
9 vaginal swab?

10 A No, you would not.

11 Q And if the penetration occurs for only a
12 short period of time and there is no ejaculation by the
13 male, would you expect to see any semen on vaginal
14 swabbings?

15 A As long as no ejaculation occurred, you would
16 not.

17 Q Does the absence of semen mean there is no
18 penetration?

19 A No. Penetration can occur without
20 ejaculation, of course.

21 Q So there is not this, "No semen; no
22 penetration"?

23 A That's right.

EILEEN G. KIMMEL
OFFICIAL COURT REPORTER

Swain - Cross

B-200

1 of person? What type of blood would you be looking to
2 find from a vaginal swabbing, for example, from
3 Miss Pederson?

4 A Well, it could be from injury.

5 Q Or how about from the defendant?

6 A That could be possible, too.

7 Q If there is no evidence that the defendant's
8 penis is bleeding, would you expect to find blood on a
9 vaginal swab?

10 A No, you would not.

11 Q And if the penetration occurs for only a
12 short period of time and there is no ejaculation by the
13 male, would you expect to see any semen on vaginal
14 swabbings?

15 A As long as no ejaculation occurred, you would
16 not.

17 Q Does the absence of semen mean there is no
18 penetration?

19 A No. Penetration can occur without
20 ejaculation, of course.

21 Q So there is not this, "No semen; no
22 penetration"?

23 A That's right.

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OFFICIAL COURT REPORTER

Swain - Cross

B-201

1 Q No semen or ejaculation; is that right?

2 A Right.

3 Q Is there always hair transfers in sexual
4 intercourse cases?

5 A Frequently, we do not get any match at all,
6 and then, of course, like I said, a lot of times we do.
7 But it can go either way.

8 THE COURT: The Court would rather rest on
9 the facts of the case and not probabilities.

10 BY MR. ADKINS:

11 Q When the F.B.I. report states, "No hairs like
12 the pubic hairs of the suspect were found in Specimen
13 Q-10," which is pubic hair combings from the victim,
14 does that just mean that they were not able to come up
15 with any of his pubic hair in the particular spot where
16 they combed her pubic hair?

17 A That's right.

18 Q And wouldn't they have to have loose pubic
19 hair in the beginning for it to transfer?

20 A It could be loose hairs or hairs that are
21 getting ready to fall out.

22 Q These pubic hair combings, is the whole area
23 of the pubic hair combed?

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OFFICIAL COURT REPORTER

Swain - Cross

B-201

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Swain - Redirect

B-202

1 A Well, if you do it right, it should be. I
2 didn't collect the samples.

3 Q You do not know what area was being taken in
4 this sample or combed in this case, do you?

5 A That's right. So I don't know if it was done
6 right or not.

7 MR. ADKINS: No further questions.

8 THE COURT: Any redirect?

9 REDIRECT EXAMINATION

10 BY MS. BEAUREGARD:

11 Q You did not personally observe the taking of
12 the samples in this case; is that correct?

13 A That's correct.

14 Q And you have stated that proper procedure on
15 the pubic hair combings would be to comb the whole
16 area?

17 A That's right.

18 Q Have you ever used Beebe Hospital in your
19 investigations in regard to taking these samples?

20 A See, a physician actually examines the female
21 victim. I don't get involved in that.

22 Q So you have never been involved in a case
23 where Beebe Hospital had been involved in taking

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Swain - Redirect

B-203

1 samples?

2 A I am involved in cases where a victim is
3 examined at Beebe Hospital, yes.

4 Q Is it also not true that minimal contact can
5 result in an exchange or transfer of evidence?

6 A Well, it is possible, but the more contact,
7 the more likely you would have hairs.

8 MS. BEAUREGARD: I have nothing further.

9 THE COURT: Do you have any further
10 questions, Mr. Adkins?

11 MR. ADKINS: No, Your Honor.

12 THE COURT: The witness is excused. Thank
13 you.

14 (Witness steps down.)

15 THE COURT: Let me see counsel for
16 scheduling.

17 (Whereupon, counsel approached the bench
18 and a discussion was had off the record, at
19 the conclusion of which counsel returned to
20 the trial table and the following proceedings
21 were had in open court:)

22 THE COURT: Ladies and gentlemen, before we
23 get to the next witness, it is going to get later than

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(DAG/PLF ATTY J Adkins

DEF ATTY R. Beswiegard

JUDGE H. W. H.

CT CK ~~1000~~ ¹⁰⁰⁰

ASE NO(S) 92-12-0044-0046

EARING DATE (S) 5-24-94

T R PTR KAYLA

CT CK 11/10/01

JURORS	PLF/STATE WITNESSES	DEFENSE WITNESSES
Mary Farrell	1. Alice Bellamy 730 16-10	1. D.W. Newell 4:11-4:32
Rebecca Roberts	2. Inezta Bellamy 10:11-16:46	2. Daryl Mifflin 5:25-9:4
Clarebelle Hastings	3. Bruce Miller 11:07-12:18	3.
Kevin White	4. Jennifer Wright 2:18-2:31	4.
Michael Richards	5. Lewin Miller 2:47-3:12	5.
Charmaine Jackson	Officer 6. Bruce Ritter 5:25:47	6.
Robert Spruse	7.	7.
Maria Warren	8.	8.
Dolores Fisher	9.	9.
Ethel Mayer	10.	10.
Mary Elliott	11.	11.
Bonnie Roth	12.	CERTIFIED 12.
* ALTERNATE JURORS ***	13.	AS A TRUE COPY <i>Marge Surrency</i>
Margaret Surrency	14.	ATTESTED NOTARY <i>Marge Surrency</i> 14.
Jones Atkins	15.	CLERK <i>Marge Surrency</i> 15.
	16.	16.
	17.	17.

S T A T E V. M I L L R

Budzisz, Stanley E.	White, Kevin H.	Jackson, Clarence R.	Warren, Gloria J.	Magee, Ethel E.	Roth, Beatrice M.
Age: 72 Race: White Sex: M	Age: 72 Race: White Sex: M	Age: 72 Race: White Sex: M	Age: 72 Race: White Sex: F	Age: 72 Race: White Sex: F	Age: 72 Race: White Sex: F
Occupation: Retired	Occupation: Engineer	Occupation: Technician	Occupation: Manufacturer	Occupation: Factory Worker	Occupation: Machine Operat.
Farnell, Mary S.	Hastings, Clarabelle	Richards, Michael R.	Spross, Robert F.	Fisher, Delores F.	Elliott, Mary A.
Age: 51 Race: White Sex: F	Age: 58 Race: White Sex: F	Age: 35 Race: White Sex: M	Age: 42 Race: White Sex: M	Age: 49 Race: White Sex: F	Age: 48 Race: White Sex: F
Occupation: (not listed)	Occupation: Machine Oper.	Occupation: Construction	Occupation: Unemployed	Occupation: Unemployed	Occupation: Teacher
<u>ALTERNATES</u>					
Barbosa, Mario A.	Robert., Rebecca K.	Semmington, Margaret R.	Adams, James W.		
Age: 51 Race: Hisp. Sex: M	Age: 25 Race: White Sex: F	Age: 66 Race: White Sex: F	Age: 66 Race: White Sex: M		
Occupation: Engineer	Occupation: Typist	Occupation: Retired	Occupation: Retired		